IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 31683

STATE OF IDAHO,	)	**2006 Opinion No. 17**
	)	
Plaintiff-Respondent,	)	**Filed: March 10, 2006**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
WILLIAM HARRY JENKINS,	)	
	)	
Defendant-Appellant.	)	
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. D. Duff McKee, District Judge. Hon. Richard A. Schmidt, Magistrate.

Order of the district court on appeal from the magistrate, affirming denial of motion to suppress evidence, reversed and case remanded.

Sallas & Gatewood, Chtd., Boise, for appellant. G. Scott Gatewood argued.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent. Lori A. Fleming argued.

WALTERS, Judge Pro Tem

William Harry Jenkins pled guilty to driving under the influence of alcohol, reserving the right to appeal and withdraw his plea should he prevail on appeal. Jenkins appeals the district court's decision affirming the magistrate's order denying Jenkins' motion to suppress evidence obtained when the arresting officer conducted a *Terry* stop within Jenkins' garage. We reverse and remand for further proceedings.

I.

FACTUAL AND PROCEDURAL SUMMARY

The following evidence was introduced at the hearings on Jenkins' motion to suppress. Officers of the Boise City Police Department were called to investigate an alleged battery. The officers were provided with the information from the dispatcher concerning facts regarding the battery, the physical description of the suspect, a description of the vehicle he was driving, and

the license plate number. An officer responded to Jenkins' residence based on the information he received from the dispatcher.

The officer testified that he knocked at the door of Jenkins' residence but there was no answer. The officer then moved his patrol car in front of a neighbor's house and waited for Jenkins. Approximately fifteen to twenty minutes later, a car matching the description was driven up to Jenkins' home. The officer could not see who was driving the vehicle or the license plate at that time.

The officer testified that he turned on his overhead lights and started to pull in behind the vehicle as Jenkins proceeded up the driveway and entered his garage, where he turned off the engine. Jenkins, however, testified that he did not see the patrol car's lights until he was in his garage. As Jenkins began to get out of his vehicle, the officer instructed him to stay in the vehicle. The officer made contact with Jenkins while Jenkins was seated in the vehicle. At the time the officer entered the garage, he did not have a warrant to search Jenkins' residence or to arrest Jenkins. The officer proceeded to question Jenkins about the battery and then conducted a field sobriety test. Jenkins was arrested and subsequently charged with one count of battery, I.C. § 18-903, and one count of driving under the influence of alcohol and/or drugs (DUI), I.C. § 18-8004.

Jenkins filed a motion to suppress the evidence gained during the investigative detention within his garage. Jenkins and the officer testified as to when the stop was initiated and how it proceeded. The magistrate found the officer to be more credible than Jenkins. The magistrate also found that the officer operated his overhead lights and initiated a stop while Jenkins was driving up his driveway and into his garage. The magistrate also found that the officer had reasonable suspicion that Jenkins had been involved in a recent crime at the time the stop was initiated and was justified in approaching Jenkins in his garage to question him about his involvement. The magistrate denied the motion and Jenkins entered a conditional guilty plea to the DUI charge, reserving the right to appeal the denial of his motion to suppress.

II.
STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the

facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999). On review of a decision of the district court, rendered in its appellate capacity, we examine the record of the trial court independently of, but with due regard for, the district court's intermediate appellate decision. *State v. Bowman*, 124 Idaho 936, 939, 866 P.2d 193, 196 (Ct. App. 1993).

III.
ANALYSIS

Jenkins asserts that the magistrate erred in denying his motion to suppress evidence obtained during the investigative detention conducted within Jenkins' garage. Specifically, Jenkins asserts that the officer did not effectuate a valid *Terry* stop of Jenkins by turning on his overhead lights as Jenkins was entering the driveway and that insufficient exigent circumstances existed to dispense with the warrant requirement within Jenkins' garage.

The guarantees against unreasonable searches found in the Fourth Amendment of the United States Constitution and Article I, § 17 of the Idaho Constitution prohibit unreasonable, warrantless intrusions into a home by government agents. *State v. Curl*, 125 Idaho 224, 225, 869 P.2d 224, 225 (1993). The guarantees under the United States Constitution and the Idaho Constitution are substantially the same. *State v. Fees*, 140 Idaho 81, 88, 90 P.3d 306, 313 (2004). Evidence in violation of these constitutional protections must be suppressed in a criminal prosecution of the persons whose rights were violated. *Curl*, at 227, 869 P.2d at 227. The state bears the burden of showing reasonableness, which we evaluate within the totality of the circumstances. *State v. Pearson-Anderson*, 136 Idaho 847, 851, 41 P.3d 275, 279 (Ct. App. 2001).

Pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), police officers may seize a person, or make a *Terry* stop, for the purpose of investigating possible criminal behavior, even though there is no probable cause to make an arrest, if there is an articulable suspicion that the person has committed or is about to commit a crime. *State v. Hankey*, 134 Idaho 844, 11 P.3d 40 (2000). In a *Terry* stop, the officer communicates to the detainee, either orally or through a show of force or authority, that he is not free to go about his business. *State v. Zubizareta*, 122 Idaho 823, 827,

839 P.2d 1237, 1241 (Ct. App. 1992). There are, however, limits on where a *Terry* stop may be conducted. In Idaho, an officer may not intrude into a residence in order to effectuate a *Terry* stop where there is no probable cause for an arrest or exigent circumstances. *State v. Maland*, 140 Idaho 817, 822, 103 P.3d 430, 435 (2004).

A. Validity of *Terry* Stop

Jenkins asserts that the officer did not effectuate a valid *Terry* stop by turning on his overhead lights because Jenkins did not yield to such showing of authority outside of the garage. *See Maland*, 140 Idaho at 820, 103 P.3d at 433 (noting oral command constituting show of authority does not constitute seizure unless person yields to that command). Jenkins further argues that the officer was prohibited from entering the garage to effectuate a *Terry* stop, regardless of where the stop was initiated. *See generally id.*

In *Maland*, officers responded to a noise complaint from an anonymous caller. At the door of the home, the officers heard music that was not excessively loud. The officers knocked on the door. Maland answered and admitted to playing his music loudly. The officers did not cite Maland but asked him to produce identification and whether he owned the home. The officers were suspicious of Maland's answers and when he attempted to close the door, one officer blocked the door by placing her foot between the doorjamb and the door while she and another officer pushed against the door. Maland then exited the house and revealed his identity. The officers placed Maland under arrest on an active bench warrant.

The Idaho Supreme Court ruled that the officers did not effectuate a valid *Terry* stop prior to the entry into Maland's home because the officers had not communicated to Maland, either orally or through a show of force or authority, that he was not free to go about his business. It was not until the officer entered the residence by placing her foot between the door and the doorjamb that the officer showed such force.

In *Maland*, the Court found significant the fact that the officers did not make a show of authority prior to Maland's attempt to close the door:

> Once Maland attempted to terminate the conversation by closing the door, the female officer intruded into his residence in order to seize him by inserting her foot through the threshold to keep him from closing the door. That intrusion into Maland's residence was the officers' first show of authority. *Police may not intrude into a residence in order to effectuate a Terry stop.* If police may not make a warrantless and nonconsensual entry into a suspect's residence in order to

> make a routine felony arrest, they certainly may not do so in order to effectuate a *Terry* stop.

Maland, 140 Idaho at 822, 103 P.3d at 435 (citation omitted) (emphasis added). The Court continues, stating that *State v. Manthei*, 130 Idaho 237, 939 P.2d 556 (1997), was wrongly decided and must be overruled. In *Manthei*, the Court had held that an officer may follow a person into his home where the officer lawfully initiates an investigative *Terry* stop based upon reasonable suspicion and that person retreats into his home. *Manthei*, 130 Idaho at 240, 939 P.2d at 559. "*Manthei* has led to the erroneous argument that law enforcement officers may enter a home to effectuate a *Terry* stop when there is no probable cause for an arrest, nor exigent circumstances including but not limited to officer or other's safety." *Maland*, 140 Idaho at 823, 103 P.3d at 436. Thus, despite the fact that the Court in *Maland* found the officers' failure to show authority prior to Maland's attempt to close the door to be significant, the Court overruled *Manthei* and concluded that initiation of a *Terry* stop in a public place does not allow the officer to follow if the individual pursued retreats into his home.

Applying the *Maland* rule to the facts in this case, whether the officer initiated his contact with Jenkins in the driveway is not dispositive. If the garage is considered part of the residence, officers generally may not enter the garage to conduct a *Terry* stop.

The question remains, however, whether Jenkins' garage was part of his residence and whether the open door and exposure to the public during the *Terry* stop render the stop valid. Idaho has not addressed the issue of whether an attached garage is considered part of the residence when determining the validity of a *Terry* stop conducted within a garage but visible from a public place.

In *State v. Burke*, 110 Idaho 621, 627, 717 P.2d 1039, 1045 (Ct. App. 1986), this Court determined that a warrant for the search of a home included the attached garage. The Court reasoned that, "a search of residential property pursuant to a warrant may include structures constituting a logical part of the premises described." *Burke*, 110 Idaho at 627, 717 P.2d at 1045. Other jurisdictions have held that an attached garage is generally considered an intimate part of a person's residence in which the person has a reasonable expectation of privacy against warrantless intrusions by the state. *State v. Blumler*, 458 N.W.2d 300, 302 (N.D. 1990); *State v. Bowling*, 867 S.W.2d 338, 341-42 (Tenn. Crim. App. 1993). A house porch, on the other hand, is considered a public place where a warrantless arrest may be made so long as the porch consists of unenclosed steps or a person standing on the porch remains visible from the street, alley or

adjacent property. *State v. Wren*, 115 Idaho 618, 623, 768 P.2d 1351, 1356 (Ct. App. 1989). Thus, while a porch is attached to the house, it has a lowered expectation of privacy if it affords public access and is open to public view. *Wren*, 115 Idaho at 623, 768 P.2d at 1356; *see also State v. Solberg*, 122 Wash.2d 688, 699, 861 P.2d 460, 466 (1993). Jenkins' garage is attached to his home. The relevant question is whether the facts that the garage door was open and that Jenkins and the officer were visible from the street diminish Jenkins' expectation of privacy in his garage.

We conclude that these facts do not diminish Jenkins' expectation of privacy in his garage. While Jenkins and the officer were visible from the street, the interior of the garage may be blocked from public view by closing the door. The garage is not a means of public access to the door of the home, such as a driveway or a path. It is, rather, an extension of the home that is normally blocked from public access. We are convinced that Jenkins should have a lesser expectation of privacy in his garage than in the main part of this residence. Thus, pursuant to the rule in *Maland*, the officer was prohibited from crossing the threshold of the garage to effectuate a *Terry* stop absent a warrant, probable cause to arrest[1] or exigent circumstances.

B. Exigent Circumstances

Jenkins also argues that the officer did not act pursuant to exigent circumstances at the time of his entry into the garage because a compelling need for official action, such as potential harm to officers or others, did not exist. The exigent circumstances exception justifies a warrantless search when the facts known to the police at the time of the entry, along with reasonable inferences drawn thereupon, demonstrate a "compelling need for official action and no time to secure a warrant." *Pearson-Anderson*, 136 Idaho at 849, 41 P.3d at 277. Under this objective standard, we determine whether those facts and inferences would "warrant a man of reasonable caution in the belief that the action taken was appropriate." *Pearson-Anderson*, 136 Idaho at 850, 41 P.3d at 278. The risk of danger to police officers or other persons either inside

---

[1] The state argues that even if the officer's entry into the garage violated the rule in *Maland*, the entry was nonetheless justified because the officer had probable cause to arrest Jenkins. The stop took place at night and the vehicle's windows were tinted, obstructing the view of the driver from outside of the vehicle, and the officer did not see the license plates on the car prior to initiating the stop. Thus, the officer did not have probable cause to arrest the driver of the vehicle because he did not know whether the driver was, in fact, Jenkins.

or outside the dwelling constitutes such an exigency justifying a warrantless entry. *Id.* at 849-50, 41 P.3d at 277-78.

Relying on *Fees*, 140 Idaho 81, 90 P.3d 306, the state contends that law enforcement had exigent circumstances to enter Jenkins' garage because the alleged battery and aggravated battery that the officer was investigating were relatively serious offenses,. In determining whether law enforcement may make a warrantless entry into a home to prevent the destruction of evidence, Idaho courts must consider whether the suspected underlying offense is sufficiently grave to justify the warrantless entry into the residence. *Curl*, 125 Idaho at 225, 869 P.2d at 225. The determination of what constitutes a relatively minor offense is based upon the type of penalty that may attach for such conduct. *Fees*, 140 Idaho at 88, 90 P.3d at 313. In *Fees*, the Idaho Supreme Court upheld officers' warrantless entry into Fees' residence to prevent the destruction of evidence of the felony offense of trafficking in marijuana, which had a minimum penalty of three years. *Fees*, 140 Idaho at 88, 90 P.3d at 313.

Here, the officer did not enter Jenkins' garage to prevent the destruction of evidence of the alleged battery. Moreover, the officer had no reason to believe that a serious crime was being committed inside garage at the time he entered or that there was any urgency justifying the entry into the garage. The officer was investigating a crime that allegedly had been committed at some time by Jenkins, and was complete. Thus, the urgency of preventing the crime had passed and there was no reason to believe that Jenkins might destroy evidence of the suspected crime. The officer did not, therefore, enter the garage pursuant to exigent circumstances.

IV.

CONCLUSION

For the reasons stated above, we reverse the district court's order affirming the magistrate's denial of Jenkins' motion to suppress evidence. The case is remanded for further proceedings.

Chief Judge PERRY and Judge GUTIERREZ **CONCUR**.